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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 GEORGE KARPINSKI,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL, Acting
14 Commissioner of the Social Security
Administration,

15 Defendant.
16

CASE NO. 2:17-CV-00325-JRC

ORDER ON PLAINTIFF'S
COMPLAINT

17
18 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and
19 Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S.
20 Magistrate Judge and Consent Form, Dkt. 6; Consent to Proceed Before a United States
21 Magistrate Judge, Dkt. 7). This matter has been fully briefed. *See* Dkts. 14, 15, 16.

22 After considering and reviewing the record, the Court concludes the ALJ provided
23 a specific and legitimate reason supported by substantial evidence for discounting the
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1 medical opinions of Theodore Braun, M.D. and Mark Magdaleno, M.D. The Court also
2 concludes that the ALJ provided at least one specific, cogent reason supported by
3 substantial evidence to discount plaintiff's complaints regarding his physical limitations.
4 Therefore, this matter should be affirmed pursuant to sentence four of 42 U.S.C. §
5 405(g).

6 BACKGROUND

7
8 Plaintiff, GEORGE KARPINSKI, was born in 1960 and was 48 years old on the
9 alleged date of disability onset of February 1, 2009. *See* AR. 351-52. Plaintiff completed
10 high school and started college, but did not finish. AR. 107. Plaintiff has work
11 experience as a sales engineer, technician, consultant and manager in
12 telecommunications. AR. 406-412. He last worked in an IT position, but was terminated
13 after twice falling asleep on the job. AR. 100.

14 According to the ALJ, through the date last insured, plaintiff has at least the severe
15 impairments of "degenerative disc disease of the lumbar spine, diabetes mellitus,
16 rheumatoid arthritis, affective disorder, anxiety disorder and somatoform disorder (20
17 CFR 404.1520(c))." AR. 19.

18 At the time of the hearing, plaintiff was living with his wife and mother in a house
19 rented to his mother. AR. 97, 99, 105.

20 PROCEDURAL HISTORY

21
22 Plaintiff's application for disability insurance benefits ("DIB") pursuant to 42
23 U.S.C. § 423 (Title II) of the Social Security Act was denied initially and following
24 reconsideration. *See* AR. 161, 175. Plaintiff's requested hearings were held before

1 Administrative Law Judge Kimberly Boyce (“the ALJ”) on June 16, 2014 (*see* AR. 85-
2 115); December 31, 2014 (*see* AR. 116-29), and June 24, 2015 (*see* AR. 130-39). On
3 August 13, 2015, the ALJ issued a written decision in which the ALJ concluded that
4 plaintiff was not disabled pursuant to the Social Security Act. *See* AR.13-37.

5 In plaintiff’s Opening Brief, plaintiff raises the following issues: (1) The ALJ
6 erred in her weighing of the medical opinion evidence; and (2) The ALJ erred in her
7 credibility assessment. *See* Dkt. 14, p. 1.

8 STANDARD OF REVIEW

9 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s
10 denial of social security benefits if the ALJ’s findings are based on legal error or not
11 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d
12 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.
13 1999)).
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15 DISCUSSION

16 **(1) Whether the ALJ erred in her treatment of the medical opinion** 17 **evidence?**

18 Plaintiff argues that the ALJ erred in her treatment of the medical opinions of
19 treating physician Theodore Braun, M.D. and examining physician Mark Magdaleno,
20 M.D. The ALJ must provide “clear and convincing” reasons for rejecting the
21 uncontradicted opinion of either a treating or examining physician or psychologist.
22 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (citing *Embrey v. Bowen*, 849 F.2d
23 418, 422 (9th Cir. 1988); *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)). But
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1 when a treating or examining physician’s opinion is contradicted, that opinion can be
2 rejected “for specific and legitimate reasons that are supported by substantial evidence in
3 the record.” *Lester*, 81 F.3d at 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043
4 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can
5 accomplish this by “setting out a detailed and thorough summary of the facts and
6 conflicting clinical evidence, stating his interpretation thereof, and making findings.”
7 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881
8 F.2d 747, 751 (9th Cir. 1989)).

9
10 **a. Theodore Braun, M.D.**

11 Theodore Braun, M.D. began treating plaintiff in February 2015. AR. 1341-47.
12 The purpose of the visit was to establish care and to discuss plaintiff’s arthritis, diabetes,
13 and blood pressure. AR. 1342. Dr. Braun charted plaintiff’s medical history and referred
14 him to social work for his depression and rheumatology for his rheumatoid arthritis. AR.
15 1344. Dr. Braun treated plaintiff three more times between February 2015 and April
16 2015. AR. 1316-1340. On April 22, 2015, Dr. Braun submitted a letter in support of
17 plaintiff’s disability application. AR. 1381. Dr. Braun opined that plaintiff’s
18 anxiety/depression, diabetes, and rheumatoid arthritis “impose significant disability on
19 [plaintiff] and preclude him from working for the foreseeable future.” AR. 1381. Dr.
20 Braun also noted that “I believe that delays in his [disability] application are producing
21 significant financial strain on [plaintiff], which is negatively affecting the management of
22 the aforementioned chronic medical conditions.” AR. 1381.
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1 The ALJ assigned little weight to Dr. Braun's opinion, noting that it was rendered
2 after plaintiff's insured status expired. AR. 27. The ALJ noted that plaintiff's diabetes
3 and rheumatoid arthritis were well-controlled when plaintiff's insured status expired.
4 AR. 27-28. The ALJ also noted that plaintiff's mood and affect were normal in early
5 2015. AR. 28. The ALJ observed that Dr. Braun did not cite any objective support for
6 his opinion and did not provide a function-by-function assessment. AR. 28. Finally, the
7 ALJ noted that "whether the claimant is disabled is an administrative finding and an issue
8 reserved to the Commissioner." AR. 28.

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10 First, the ALJ appears to discount Dr. Braun's opinion because it was rendered
11 after the period of disability. AR. 27. However, the Ninth Circuit has "held that 'medical
12 evaluations made after the expiration of a claimant's insured status are relevant to an
13 evaluation of the preexpiration condition.'" *Lester v. Chater*, 81 F.3d 821, 832 (9th Cir.
14 1996) (quoting *Smith v. Bowen*, 849 F.2d 1222, 1225 (9th Cir. 1988)) (footnote omitted);
15 *cf. Taylor v. Comm'r SSA*, 659 F.3d 1228, 1232 (9th Cir. 2011) ("if the Appeals Council
16 rejected Dr. Thompson's opinion because it believed it to concern a time after Taylor's
17 insurance expired, its rejection was improper"). Thus, the ALJ erred by discounting Dr.
18 Braun's medical opinion on this basis.

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20 Second, the ALJ discounted Dr. Braun's opinion that plaintiff was disabled
21 because "whether the claimant is disabled is an administrative finding and an issue
22 reserved to the Commissioner." AR. 28. However, according to the Ninth Circuit,
23 "'physicians may render medical, clinical opinions, or they may render opinions on the
24 ultimate issue of disability - the claimant's ability to perform work.'" *Garrison v Colvin*,

1 759 F.3d 995, 1012 (9th Cir. 2014) (quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th
2 Cir. 1998)). Thus, the ALJ also erred by rejecting Dr. Braun's opinion because he opined
3 on the ultimate issue of disability.

4 Third, the ALJ discounted Dr. Braun's opinion because plaintiff's diabetes and
5 rheumatoid arthritis were well-controlled when plaintiff's insured status ended. In
6 addition, the ALJ noted that plaintiff's mood and affect were normal during the period in
7 which Dr. Braun rendered his opinion. In reaching this determination, the ALJ did not
8 cite to any records regarding plaintiff's diabetes or rheumatoid arthritis. With respect to
9 plaintiff's mood and affect, the ALJ cited to reports dated January 15, 2015, April 26,
10 2015, and April 27, 2015 as evidence that plaintiff's mood and affect were normal (AR.
11 28). An ALJ may discount a doctor's opinion that is inconsistent with the medical
12 record. *Tommasetti v. Astrue*, 544 F.3d 1035, 1041 (9th Cir. 2008). However, here, the
13 evidence of record does not entirely support the ALJ's findings. For example, with
14 respect to mood and affect, Dr. Braun's own treatment records demonstrate that plaintiff
15 presented with anxiety and depression at his visits. *See* AR. 1327, 1334, 1342. Thus,
16 discounting Dr. Braun's opinion based upon plaintiff's mood and affect is not supported
17 by substantial evidence. The ALJ did not provide citations to the record nor did she
18 provide analysis explaining why Dr. Braun's opinion was discounted due to plaintiff's
19 rheumatoid arthritis and diabetes. Thus, the ALJ failed to provide a specific and
20 legitimate reason for discounting Dr. Braun's opinion for this additional reason.
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23 Fourth, the ALJ rejected Dr. Braun's opinion because he had only seen plaintiff
24 four times when he rendered his opinion. When evaluating the weight to be given to a

1 treating doctor, the ALJ considers a number of factors in deciding the weight to give to
2 the medical opinion, including the length of the treatment relationship and the frequency
3 of examination, as well as the nature and extent of the treatment relationship. 20 C.F.R. §
4 404.1527(c); *see also* 20 C.F.R. § 416.927(c); *Trevizo v. Berryhill*, 871 F.3d 664, 675
5 (9th Cir. 2017) (citing 20 C.F.R. § 404.1527(c)(2)) (unpublished amended opinion).
6 Thus, an ALJ may properly consider the length of treatment when evaluating a medical
7 opinion. However, here, the ALJ's statement regarding the length of Dr. Braun's
8 treatment relationship is conclusory and lacks the specificity required by the Court. *See*
9 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988); *McAllister v. Sullivan*, 888 F.2d
10 599, 602 (9th Cir. 1989) (the ALJ's rejection of a physician's opinion on the ground that
11 it was contrary to clinical findings in the record was "broad and vague, failing to specify
12 why the ALJ felt the treating physician's opinion was flawed").

14 Finally, the ALJ rejected Dr. Braun's opinion because he did not provide any
15 objective support for his opinion and he did not include a function by function analysis.
16 AR. 28. A doctor is not required to provide a function by function analysis of the bases
17 for her disability opinion. However, "when evaluating conflicting medical opinions, an
18 ALJ need not accept the opinion of a doctor if that opinion is brief, conclusory, and
19 inadequately supported by clinical findings." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216
20 (9th Cir. 2005) (citing *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001)). An
21 ALJ need not accept a treating physician's opinion which is "brief and conclusionary in
22 form with little in the way of clinical findings to support [its] conclusion." *Magallanes v.*
23 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (citing *Young v. Heckler*, 803 F.2d 963, 968
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1 (9th Cir.1986)). Here, the Court finds that Dr. Braun’s letter is conclusory and does not
2 contain any functional limitations or the reason why he believes plaintiff to be completely
3 disabled for the “foreseeable future.” AR. 1381. Dr. Braun does not explain how he
4 believed plaintiff would be disabled or the basis for his opinion that the disability would
5 last for the “foreseeable future.” Moreover, Dr. Braun’s treatment notes do not contain
6 any basis for his determination that plaintiff is completely disabled. Thus, the ALJ’s
7 rejection of Dr. Braun’s letter as unsupported by objective evidence is a specific and
8 legitimate reason for rejecting Dr. Braun’s opinion regarding plaintiff’s disability
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10 Moreover, including one or more erroneous reasons for rejecting a medical
11 opinion among other reasons is harmless error where the other reason is supported by
12 substantial evidence and the erroneous reason does not negate the validity of the overall
13 determination. *See Carmickle*, 533 F.3d at 1162. As noted above, the Court finds the
14 ALJ properly rejected the Dr. Braun’s medical opinion as unsupported by objective
15 evidence. Thus, because rejection of Dr. Braun’s opinion on this basis was specific and
16 legitimate, the Court finds the ALJ’s treatment of Dr. Braun’s opinion is supported by
17 substantial evidence.

18 Plaintiff asserts that the ALJ should have contacted Dr. Braun for clarification
19 before rejecting his opinion. “The claimant bears the burden of proving that she is
20 disabled.” *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). An ALJ is required to
21 recontact a doctor only if the doctor’s report is ambiguous or insufficient for the ALJ to
22 make a disability determination. 20 C.F.R. §§ 404.1512(e), 416.912(e); *Thomas*, 278
23 F.3d at 958. Here, Dr. Braun’s opinion was not ambiguous—he clearly opined that he
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1 believed plaintiff was disabled for the foreseeable future. Furthermore, the ALJ, with
2 support in the record, found the evidence adequate to make a determination regarding
3 plaintiff's disability. Accordingly, the ALJ did not have a duty to contact Dr. Braun.

4 **b. Mark Magdaleno, M.D.**

5 Mark Magdaleno, M.D. conducted a Physical Functional Evaluation on February
6 20, 2013. AR. 561-67. As part of his evaluation, Dr. Magdaleno examined plaintiff,
7 including completing a Range of Joint Motion Evaluation Chart (AR. 566-67) and
8 reviewing a radiology report (AR. 564). Dr. Magdaleno observed that plaintiff was in
9 "obvious discomfort" and that he had "trouble getting into the chair and is limited in
10 sitting." AR. 562. Dr. Magdaleno opined that plaintiff would be limited to sedentary
11 work for 8 months. AR. 563. Dr. Magdaleno also opined that plaintiff was severely
12 limited in his ability to sit, stand, walk, lift, carry, push, pull, stoop, and crouch. AR. 562.

14 The ALJ assigned little weight to Dr. Magdelano's opinion because it was
15 "rendered prior to the removal of the malfunctioning neurostimulator that was actually
16 causing the claimant pain." AR. 26. The ALJ also noted that after the device was
17 removed in May 2013, treatment records indicate that plaintiff's symptoms improved.
18 AR. 26. The ALJ further observed that "Dr. Magdaleno estimated that the degree of
19 limitation he opined would only last eight months, which does not meet the 12-month
20 duration requirement." AR. 26.

21 An ALJ may properly discount a medical opinion where that opinion is
22 inconsistent with the record as a whole, which indicates the claimant improved and
23 stabilized with treatment. *See Batson*, 359 F.3d at 1195 (an ALJ may properly reject a
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1 medical opinion that is inconsistent with the record); *see, e.g., Lawson v. Colvin*, 2013
2 WL 6095518 (W.D. Wash. Nov. 20, 2013) (ALJ properly discounted physician’s opinion
3 as inconsistent with the record as a whole, which indicates the claimant improved and
4 stabilized with treatment); *Nance v. Colvin*, 2014 WL 3347027 (C.D. Cal. July 8, 2014)
5 (discounting opinion in part because it predated knee surgery which resulted in “overall
6 improvement”). Here, the record demonstrates that plaintiff improved with treatment,
7 particularly after the neurostimulator was removed, which occurred after Dr. Magdaleno
8 rendered his opinion. *See, e.g.,* AR. 500, 530, 1265.

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10 Regardless, the Court need not decide whether Dr. Magdelano’s opinion is
11 inconsistent with the record as a whole because he opined that plaintiff’s impairments
12 would last only eight months. AR. 563. Any impairment that does not last continuously
13 for twelve months does not satisfy the requirements to be determined to be a severe
14 impairment. 20 C.F.R. §§ 404.1505(a), 404.1512(a) and (c), 416.905(a), 416.912(a) and
15 (c); *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir. 1995); *Carmickle*, 533 F.3d at 1165
16 (affirming ALJ’s finding that treating physicians’ short term excuse from work was not
17 indicative of “claimant’s long term functioning.”). Thus, the ALJ properly discounted
18 Dr. Magdelano’s medical opinion on this basis. As the ALJ offered at least one specific
19 and legitimate reason supported by substantial evidence to discount Dr. Magdelano’s
20 opinion, the Court upholds the ALJ’s determination. *See Carmickle*, 533 F.3d at 1162.

1 **(2) Whether the ALJ erred in evaluating plaintiff's credibility?**

2 Plaintiff also argues that the ALJ erred in assessing his subjective complaints.
3 Dkt. 14, pp. 15. If an ALJ rejects the testimony of a claimant once an underlying
4 impairment has been established, the ALJ must support the rejection “by offering
5 specific, clear and convincing reasons for doing so.” *Smolen v. Chater*, 80 F.3d 1273,
6 1284 (9th Cir. 1996) (citing *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.1993)); *see also*
7 *Burrell v. Colvin*, 775 F.3d 1133, 1137 (9th Cir. 2014) (“There is no conflict in the
8 caselaw, and we reject the government’s argument that *Bunnell* excised the “clear and
9 convincing” requirement”); *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (citing
10 *Bunnell v. Sullivan*, *supra*, 947 F.2d at 343, 346-47). As with all of the findings by the
11 ALJ, the specific, clear and convincing reasons also must be supported by substantial
12 evidence in the record as a whole. 42 U.S.C. § 405(g); *see also Bayliss v. Barnhart*, 427
13 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.
14 1999)).

15
16 If the medical evidence in the record is not conclusive, sole responsibility for
17 resolving conflicting testimony and analyzing a claimant’s testimony regarding
18 limitations lies with the ALJ. *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1999)
19 (citing *Waters v. Gardner*, 452 F.2d 855, 858 n.7 (9th Cir. 1971) (*Calhoun v. Bailar*, 626
20 F.2d 145, 150 (9th Cir. 1980)). An ALJ is not “required to believe every allegation of
21 disabling pain” or other non-exertional impairment. *Fair v. Bowen*, 885 F.2d 597, 603
22 (9th Cir. 1989) (citing 42 U.S.C. § 423(d)(5)(A) (other citations and footnote omitted)).
23 Even if a claimant “has an ailment reasonably expected to produce *some* pain; many
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1 medical conditions produce pain not severe enough to preclude gainful employment.”
2 *Fair, supra*, 885 F.2d at 603. The ALJ may “draw inferences logically flowing from the
3 evidence.” *Sample, supra*, 694 F.2d at 642 (citing *Beane v. Richardson*, 457 F.2d 758
4 (9th Cir. 1972); *Wade v. Harris*, 509 F. Supp. 19, 20 (N.D. Cal. 1980)). However, an
5 ALJ may not speculate. *See* SSR 86-8, 1986 SSR LEXIS 15 at *22.

6 Here, the ALJ determined that plaintiff’s “medically determinable impairments
7 could reasonably be expected to cause the alleged symptoms; however, the claimant’s
8 statements concerning the intensity, persistence, and limiting effects of these symptoms
9 are not entirely credible.” AR. 23. With respect to plaintiff’s physical limitations, the
10 ALJ noted that contrary to plaintiff’s statements, records indicate that plaintiff had no
11 side effects from medicine and that medications controlled or improved his symptoms.
12 AR. 23-25. The ALJ also noted that plaintiff appeared normal and with no discomfort at
13 medical exams, and that “[n]one of the imaging obtained through the date last insured
14 was described as showing erosive changes from inflammatory arthritis.” AR. 24. With
15 respect to plaintiff’s mental impairments, the ALJ noted that plaintiff’s activities—
16 including visiting Romania and getting married—undermined plaintiff’s claims. AR. 25.
17 Moreover, the ALJ noted that when plaintiff was seen for physical impairments, doctors
18 noted plaintiff’s mood and affect were normal. AR. 25.

19 As an initial matter, plaintiff appears to assert that because he earned a high
20 income prior to becoming allegedly disabled, then his “strong history” should weigh in
21 his favor and the Court should consider this factor when evaluating the ALJ’s
22 determination regarding plaintiff’s subjective complaints. *See* Dkt. 14, p. 13. While the
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1 Court appreciates plaintiff's position, it is not within the purview of this Court to re-
2 weigh the considerations before the ALJ and there is no regulation or case law provides
3 that requires an ALJ to consider a strong work history as support for an application to
4 obtain disability benefits.

5 In addition, plaintiff did not address each of the reasons the ALJ provided for
6 discounting his testimony. *See* Dkt. 14, pp. 13-15. Rather, plaintiff argued that the ALJ
7 "concluded that the medical evidence did not support a finding that Plaintiff's arthritis
8 would prevent him from working and that there was no evidence of a dramatic worsening
9 in Plaintiff's conditions since the prior ALJ decision." Dkt. 13, p. 14. Plaintiff did not
10 address the ALJ's determination regarding his mental impairments. In his reply brief,
11 plaintiff noted that he was not alleging error based upon the ALJ's treatment of his
12 mental impairments and that his argument "centered on the ALJ's consideration of the
13 evidence pertaining to Plaintiff's physical impairments." Dkt. 16, pp. 1-2. The Court
14 agrees that plaintiff has not addressed the ALJ's treatment of his subjective complaints
15 regarding his mental impairments. Therefore, the Court limits its analysis of the ALJ's
16 decision to discount plaintiff's testimony to the ALJ's determination regarding plaintiff's
17 physical impairments. *Cf. Thompson v. Commissioner*, 631 F.2d 642, 649 (9th Cir.
18 1980), *cert. denied*, 452 U.S. 961 (1981) ("appellants cannot raise a new issue for the first
19 time in their reply briefs") (citing *U.S. v. Puchi*, 441 F.2d 697, 703 (9th Cir. 1971), *cert.*
20 *denied*, 404 U.S. 853 (1971)); *U.S. v. Levy*, 391 F.3d 1327, 1335 (11th Cir. 2004) ("raise
21 the issue in your initial brief or risk procedural bar").
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1 First, the ALJ determined that plaintiff's subjective complaints regarding his
2 physical limitations and pain were undermined by the objective medical records. A
3 determination that a claimant's subjective complaints are inconsistent with clinical
4 findings can satisfy the clear and convincing requirement. *See Regennitter v.*
5 *Commissioner of Social Security Admin.*, 166 F.3d 1294, 1297 (9th Cir.1998). However,
6 "an ALJ does not provide specific, clear, and convincing reasons for rejecting a
7 claimant's testimony by simply reciting the medical evidence in support of his or her
8 residual functional capacity determination." *Brown-Hunter v. Colvin*, 806 F.3d 487, 489
9 (9th Cir. 2015). Rather, to discount a claimant's testimony regarding pain, an ALJ "must
10 state *which* [such] testimony is not credible and what evidence suggests the complaints
11 are not credible." *Dodrill*, 12 F.3d at 917 (emphasis added); *see also Lester*, 81 F.3d at
12 834. Here, the ALJ summarized evidence contained in medical records, but only some of
13 the cited medical records are moored to specific testimony or statements the ALJ found
14 not credible. *See* AR. 23-26. The Court finds that the ALJ's determination that
15 plaintiff's testimony regarding the side effects of his medication is inconsistent with the
16 medical records is supported by substantial evidence. Although plaintiff stated that his
17 pain medications caused him to be sleepy and caused side effects (*see* AR. 23 citing AR.
18 405), as noted by the ALJ, numerous medical records undermine plaintiff's testimony
19 that he had side effects from his medication. *See* AR. 23 (citing AR. 420, 500, 1003).

21 However, with respect to plaintiff's rheumatoid arthritis and diabetes, the ALJ
22 failed to identify *which* testimony is not credible and *why* plaintiff's testimony is not
23 credible based upon the alleged inconsistency. The ALJ simply recited the medical
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1 evidence related to plaintiff's rheumatoid arthritis (*see* AR. 24) and stated that "[o]verall,
2 the medical records do not support a conclusion that the recently diagnosed rheumatoid
3 arthritis would have prevented the claimant from working at any point through the date
4 last insured, at which point his symptoms were under good control." AR. 24-25.
5 Similarly, with respect to plaintiff's diabetes, the ALJ outlined the medical evidence and
6 noted that the diabetes appeared to be under control without any medication. AR. 25.
7 The ALJ did not explain whether and how the medical records related to plaintiff's
8 rheumatoid arthritis and diabetes undermine his testimony, which is legal error. *See*
9 *Dodrill*, 12 F.3d at 917. Indeed, it is unclear if the ALJ even intended to discount any of
10 plaintiff's statements regarding his rheumatoid arthritis and diabetes. Accordingly, the
11 ALJ erred in part by discounting plaintiff's testimony based on inconsistency with the
12 treatment record. However, discounting plaintiff's testimony regarding his pain
13 medication and side effects is specific and legitimate and supported by substantial
14 evidence.
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16 Second, the ALJ determined that medical records demonstrate improvement and
17 thus indicate that plaintiff's symptoms were not as severe as alleged. An ALJ may
18 discount a claimant's testimony on the basis of medical improvement. *See Morgan v.*
19 *Comm'r, Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tidwell v. Apfel*, 161 F.3d
20 599, 601 (9th Cir. 1998). Moreover, even if the ALJ explains her decision with "less than
21 ideal clarity," the Court must uphold her decision if the ALJ's "path may reasonably be
22 discerned." *Molina v. Astrue*, 674 F.3d 1104, 1121 (9th Cir. 2012) (quotation and
23 citation omitted). As noted, the ALJ listed numerous medical records as evidence that
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1 plaintiff's complaints regarding his physical impairments were not as severe as alleged.
2 In this case, the medical evidence cited by the ALJ supports the ALJ's determination that
3 plaintiff's diabetes, arthritis, and pain were controlled or improved by medication or diet.
4 See AR. 23-25. For example, with respect to his complaints of pain, the ALJ correctly
5 noted that medical records indicate that plaintiff's pain was controlled or improved with
6 medication and that plaintiff was pleased when the malfunctioning dorsal column
7 stimulator was removed. AR. 500, 530, 1265. In addition, the record demonstrates that
8 plaintiff's rheumatoid arthritis was under control with medication. AR. 1257, 1265.
9 Finally, the record demonstrates that plaintiff stopped taking medication and was able to
10 control his diabetes with diet. AR. 500, 1003. Thus, the ALJ properly discounted
11 plaintiff's allegations of disabling limitations based upon medical evidence
12 demonstrating improvement of symptoms. See *Morgan*, 169 F.3d at 599. Thus, the ALJ
13 provided a specific and legitimate reason supported by substantial evidence to discount
14 plaintiff's complaints regarding his physical symptoms.
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16 The Ninth Circuit has "recognized that harmless error principles apply in the
17 Social Security Act context." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
18 (citing *Stout v. Commissioner, Social Security Administration*, 454 F.3d 1050, 1054 (9th
19 Cir. 2006). The Court noted that "several of our cases have held that an ALJ's error was
20 harmless where the ALJ provided one or more invalid reasons for disbelieving a
21 claimant's testimony, but also provided valid reasons that were supported by the record."
22 *Id.* (citations omitted). Here, while the ALJ erred in part in discrediting plaintiff's
23 testimony based on her findings that plaintiff's testimony was inconsistent with his
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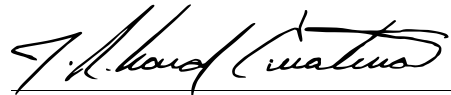
1 treatment history and medical records, the ALJ also provided a valid reason for
2 discrediting plaintiff. The ALJ's specific, cogent reason supported by substantial
3 evidence is sufficient to support the ALJ's decision to discredit plaintiff. As such, the
4 ALJ's error is harmless. *Molina*, 674 F.3d at 1115.

5
6 CONCLUSION

7 Based on these reasons and the relevant record, the Court **ORDERS** that this
8 matter be **AFFIRMED**.

9 **JUDGMENT** should be for defendant and the case should be closed.

10 Dated this 30th day of October, 2017.

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12 J. Richard Creatura
13 United States Magistrate Judge
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